

STATE OF TEXAS §

COUNTY OF BRAZOS §

THE RANCH AT TURKEY CREEK
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into by and between the City of Bryan, Texas, a Texas home-rule municipal corporation, ("City"), and Cozumel Investors, Ltd. ("Developer").

WHEREAS, the Texas Constitution prohibits any city, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is the owner of 6.17 acres of property identified by the Brazos Central Appraisal District ("BCAD") as Parcel 304076, which is more fully described in the boundary description which is attached to this Agreement as **Exhibit A** ("Property"); and

WHEREAS, the Property is located off State Highway 47, a thoroughfare the City has been focused on protecting and promoting high-quality development since before the construction of the Health Science Center and the creation of the BioCorridor; and

WHEREAS, Developer desires to redevelop the property into condominiums/apartments, but requires upgrades to the infrastructure, specifically construction of an 8-inch water line, which will make the project economically infeasible in the long term; and

WHEREAS, in the interest of encouraging further development of this area, the City Council is willing to offer an incentive equal to the actual cost of the 8-inch water line, provided that the Property reaches \$5,000,000 in increased taxable value, which incentive will be paid in the form of a reimbursement out of a portion of the tax revenue generated by the Property; and

WHEREAS, the City Council has determined that it is in the best interests of the City to continue to develop the area around Highway 47 to spur further growth and that the project planned by Developer will be beneficial to the citizens of this City at large; and

NOW, THEREFORE, for and in consideration of the premises and mutual agreements and covenants set forth herein, the City and the Developer agree as follows:

ARTICLE I
8-inch Water Line

1. Developer will be responsible for engaging a contractor to construct the public infrastructure necessary to develop the Property into townhomes, including construction of an 8-inch water line, as shown on the engineer's estimate attached to this Agreement as **Exhibit B**, ("Project"). Developer shall have the Project designed and constructed at its own expense.

2. Within one hundred twenty (120) days of the effective date of this Agreement, Developer shall have a professional engineer provide the City Engineer with design plans for the Project. The design plans shall be subject to final approval by the City Engineer. Prior to commencing work, Developer will obtain the necessary permits to conduct work within City right of way, including obtaining bonds, insurance, and meeting other requirements related thereto.

ARTICLE II

CHAPTER 380 GRANT

3. The City will provide a Chapter 380 Economic Development grant equal to the actual hard costs of the 8-inch water line (i.e. labor and materials, excluding overhead or design costs) up to \$265,000. The grant will be paid periodically, upon request by the Developer. Developer must have met the conditions set forth below in order to be eligible for a grant:

- a. Developer must not be in breach of this Agreement;
- b. City must have accepted all required public infrastructure;
- c. A certificate of occupancy must have been issued for the Property;
- d. All ad valorem taxes for the Property must have been paid; and
- e. The BCAD appraised value for the Property must be at least \$5,032,250.

4. The grant payments will be equal to fifty percent (50%) of the tax revenue generated by the Increased Value of the Property. The Increased Value of the Property is the BCAD appraised value of the property (following issuance of one or more certificates of occupancy by the City), less the base value of \$32,250.

5. Once the Developer has met the above conditions, and on an annual basis thereafter while this Agreement remains in effect, the Developer may submit a request for a grant payment to the City, along with copies of invoices from the contractor showing actual amounts paid. As a condition for reimbursement, Requests shall be made in the month of October, and shall be payable out of the taxes paid for that year only. The Developer must include a receipt from the Brazos County Tax Office showing that the taxes for the year have been paid. Failure to request reimbursement waives any right to a reimbursement out of that year's taxes.

6. The City's obligations under this Agreement are conditioned upon annual appropriation for same by the City Council.

ARTICLE III

TERM

7. The term of this Agreement shall be from the effective date, which shall be the date signed by the last party to sign, and shall terminate upon the occurrence of one of the following:

- a. Developer has received a combined total of \$265,000 in grant payments;
- b. Developer has received seven (7) annual grant payments; or
- c. Forty-two (42) months have passed since the effective date of this Agreement and Developer has not yet qualified for, or has not yet requested, a grant payment.

ARTICLE IV

MISCELLANEOUS

8. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to

the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the term of this Agreement, Developer shall notify City of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the City not later than the 120th day after the date the City notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

9. Indemnification. DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

11. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

12. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

13. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

14. No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

15. Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY

City of Bryan
City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

DEVELOPER

Cozumel Investors, Ltd.
Attn: Michael J. Beckendorf
2509 River Forest Drive
Bryan, Texas 77802

16. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

17. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

18. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

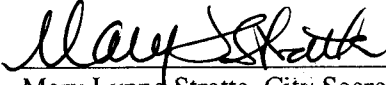
19. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

20. Time is of the Essence. Time is of the essence in all matters pertaining to the performance of this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal holiday, then that obligation shall be performable the next following regular business day.

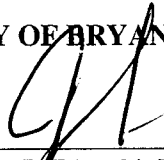
[signatures to follow]

Executed to be effective this 18 day of November, 2016

ATTEST:


Mary Lynne Stratta, City Secretary

CITY OF BRYAN, TEXAS


Jason R. Bienski, Mayor

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney

DEVELOPER
Cozumel Investors, Ltd.


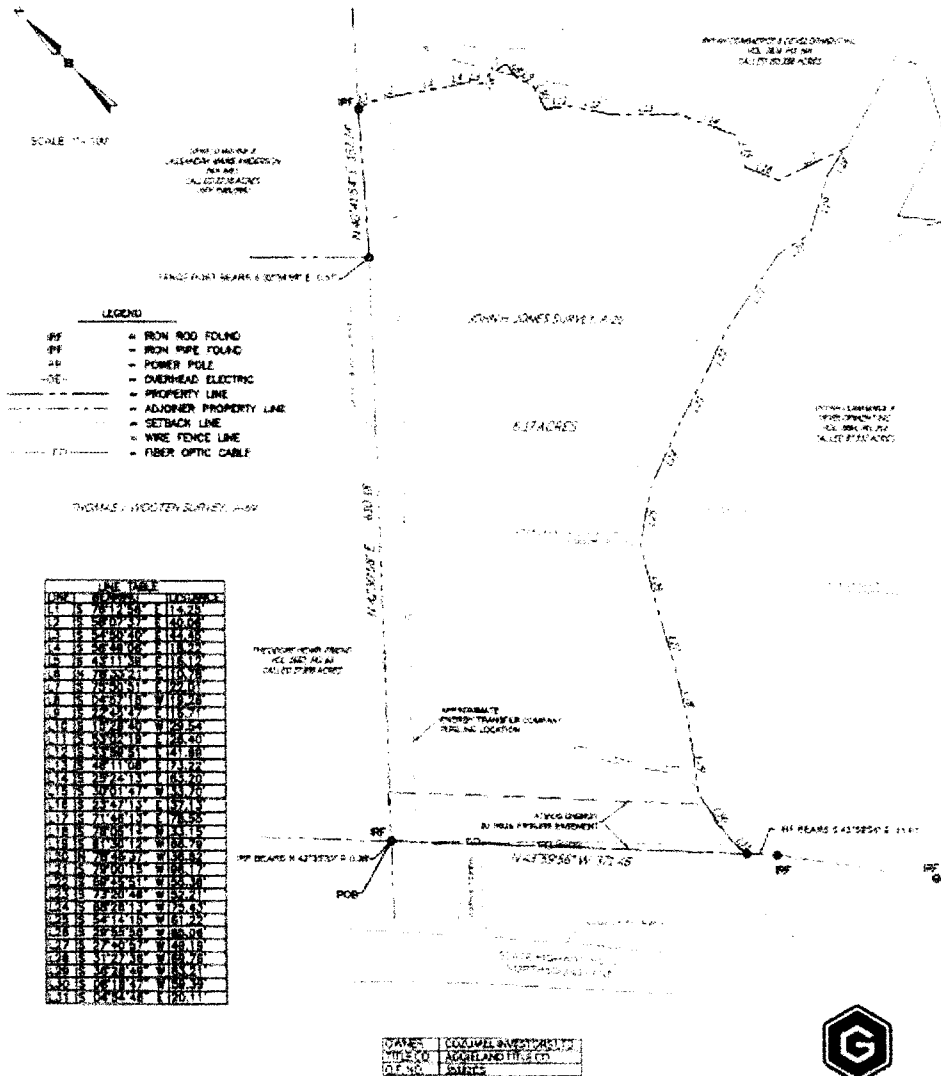
By: 
Michael J. Beckendorf, Managing Member
Cozumel Group, L.L.C. General Partner

Exhibit A



NOTES:

1. BEARING REFERS TO NAD83 TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, AS OBTAINED BY GPS OBSERVATION.
2. TITLE APPLICABLE TO BE SET IN THE 8' DEVELOPMENT, INC. BY VETUS OF A DEED.
3. RECORDS OF VOLUME 8710, PAGE 78, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, FOR THE SUBJECT PROPERTY APPEAR TO BE WITHIN THE 100 YEAR FLOOD LIMIT AS KNOWN IN THE FEMA FLOOD INSURANCE RATE MAP OF BRAZOS COUNTY, TEXAS AND INCORPORATED AREAS, COMMUNITY MAP NO. 40000, PANEL NO. 0200, MAY 10, 2012, MONROVIA, TEXAS, DATED 10/10/12, DATE OF MAY 10, 2012.
4. PROPERTY IS SUBJECT TO TERMS AND CONDITIONS AS WELL AS SETBACK PER THE CITY OF BRYAN CODE OF ORDINANCES.
5. PROPOSED EASEMENTS ARE MONUMENTED WITH 1/2 INCH IRON RODS SET OR OTHERWISE NOTED.

CERTIFICATE OF SURVEYOR

GREGORY MORRIS, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6067 IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE, CORRECT, AND ACCURATELY REPRESENTS THE LINES AND DIMENSIONS OF THE PROPERTY WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT IT INDICATES ALL EASEMENTS AND ENCUMBRANCES AS THEY ARE VISIBLE ON THE GROUND, AND THAT THERE ARE NO ENCUMBRANCES, CONSTRAINTS OR PROHIBITIONS, EXCEPT AS SHOWN HEREOF.

Gregory Morris 8/1/16
GREGORY MORRIS, P.L.S. NO. 6067

LAND TITLE SURVEY

VOLUME 8710, PAGE 78
CALLED 6.17 ACRE TRACT
JOHN JONES SURVEY, A-26
BRYAN, BRAZOS COUNTY, TEXAS

ADDRESS
STATE HIGHWAY 47
BRYAN, TEXAS 77807



GESSNER ENGINEERING
GESSNER ENGINEERING
2007 LINDEN DRIVE
College Station, Texas 77840
www.gessner-engineering.com
FORM REPORT YEAR 2008 HANDBOOK
TSPS 1-1000, PEOPLE 1-1000000
ONLY ONE SHOWN: 177, 18, 18, 18
ADDRESS: 177, 18, 18, 18
PHONE: 177, 18, 18, 18
FAX: 177, 18, 18, 18

SURVEY PLAT

Issue Date: 08-17-16
Drawn By: MJS
Checked By: CH
Project Number: 25-0475

Exhibit B

Probable Estimate of Public Infrastructure Construction Costs The Ranch at Turkey Creek - 8" WL Offsite Extension to Villa Maria Gessner Engineering, LLC October 17, 2016					
GE Job #: 16-0473					
MISCELLANEOUS					
Item #	Item	Quantity	Units	Unit Cost	Total
100	Mobilization and Overhead	1	LS	\$ 20,000.27	\$ 20,000.27
101	Hydromulch	3,413	SY	\$ 0.60	\$ 2,048.00
102	Silt Fence Erosion Control	2,303	LF	\$ 1.50	\$ 3,454.50
Sub Total - Miscellaneous					\$ 25,502.77
Water					
Item #	Item	Quantity	Units	Unit Cost	Total
200	8" PVC Waterline (incl. fittings)	2048	LF	\$ 60.00	\$ 122,880.00
201	8" Gate Valve	5	EA	\$ 2,900.00	\$ 14,500.00
202	8" Meter	1	EA	\$ 30,000.00	\$ 30,000.00
203	Fire Hydrant Assembly w/ valve and box	2	EA	\$ 6,900.00	\$ 13,800.00
204	6" PVC Waterline (incl. fittings)	10	LF	\$ 56.00	\$ 560.00
205	Trench Safety	2058	LF	\$ 2.00	\$ 4,116.00
206	Connect to 12" Line (Cut-In Tee) (incl. appurtenances)	1	EA	\$ 6,200.00	\$ 6,200.00
Sub Total - Water System					\$ 192,056.00
Paving					
Item #	Item	Quantity	Units	Unit Cost	Total
300	6" Concrete Pavement Trench Repair	44.44	SY	\$ 55.00	\$ 2,444.20
Sub Total - Water System					\$ 2,444.20
Construction Cost					\$ 220,002.97
20% Contingency					\$ 44,000.59
Total Construction Cost					\$ 264,003.56

